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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/668,105
Filing Date: September 22, 2003
Appellant(s): VIRTÀ, MIKKO K.

Keith R. Obert
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 09/22/2010 appealing from the Office action mailed 01/22/2010.

(1) Real Party in Interest

The examiner has no comment on the statement of the real party in interest.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1, 3-24 and 27-32.

(4) Status of Amendments After Final

The examiner has no comment on the Appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the Appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

Dean et al. US 6,167,379 (herein Dean)

Barto et al. US 7,069,097 (herein Barto)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

A. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-24, and 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dean et al. US 6,167,379 (herein Dean) in view of Barto et al. US 7,069,097 (herein Barto).

Regarding claim 1, Dean teaches a method comprising:

recording in an electronic schedule apparatus at least one amount of personal time during which no bookings by others are allowed (col. 2, lines 16-19, fig. 1, 2, electronic schedule apparatus, fig. 4, col. 6, lines 12-24, user can reject scheduling requests during a previously scheduled time interval);

receiving at the electronic schedule apparatus an electronic inquiry about availability for a booking (col. 2, lines 6-11);

determining or indicating whether the at least one amount of personal time can fit within the at least one respective interval in order to accommodate the booking without causing a scheduling conflict (col. 2, lines 11-15); and

rejecting the booking in case of a scheduling conflict between the booking and the personal time (col. 6, lines 12-24, option to reject booking causing scheduling conflict).

Dean does not expressly teach:

storing in the electronic schedule apparatus at least one respective interval of time during which the at least one amount of the personal time is to be reserved, wherein the at least one respective interval of time is a fixed interval of time, wherein each of the at least one amount of the personal time is less than the respective interval of time.

Barto teaches:

storing in the electronic schedule apparatus at least one respective interval of time during which the at least one amount of the personal time is to be reserved, wherein the at least one respective interval of time is a fixed interval of time (col. 9, lines 25-37, kernel is the personal time, working window or commitment window is the respective interval of time), wherein each of the at least one amount of the personal time is less than the respective interval of time (col. 9, lines 25-37).

The inventions of Dean and Barto pertain to scheduling and dealing with conflicts. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Barto does not teach away from or contradict Dean, but rather, teaches a function that was not addressed. Additionally, the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the advantage of fewer scheduling conflicts when using dynamic scheduling.

Regarding claim 3, Dean teaches providing the user with an option whether or not to accept the booking, in case of a positive determination or indication that the personal time can fit (col. 2, lines 11-15, col. 4, lines 44-56, col. 6, lines 12-24).

Regarding claim 4, Dean teaches automatically making the booking, in case of a positive determination or indication that the personal time can fit (col. 6, lines 25-31).

Regarding claim 5, Dean teaches sending a user availability message in response to the electronic inquiry, in case of a positive determination or indication that the personal time can fit (col. 2, lines 16-19).

Regarding claim 6, Dean teaches providing the user with a conflict notification and an option whether or not to accept the booking, in case of a negative determination or indication that the personal time cannot fit (col. 4, lines 44-56, col. 6, lines 26-41).

Regarding claim 7, Dean does not teach wherein the at least one respective interval of time represents the user's midday, workday, work week, or any user definable period.

Barto teaches wherein the at least one respective interval of time represents the user's midday, workday, work week, or any user definable period (col. 9, lines 25-37).

The inventions of Dean and Barto pertain to scheduling. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Barto does not teach away from or contradict Dean, but rather, teaches a function that was not addressed. Additionally, the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have

been obvious to combine the teachings, motivated by the advantage of fewer scheduling conflicts when using dynamic scheduling.

Regarding claim 8, neither Dean nor Barto explicitly teach wherein the at least one amount of the personal time is given as a percentage of the respective interval of time.

Official notice is given that using percentage is an equivalent form to using hours and minutes.

All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the advantage in mathematical simplicity of using percentages.

Regarding claim 9, Dean teaches wherein the at least one amount of the personal time is given as a particular continuous or non-continuous duration (col. 2, lines 6-15, it is inherent that the personal time is given as a particular continuous or non-continuous duration).

Regarding claim 10, Dean teaches reserving at least one fixed block of the personal time (col. 2, lines 6-15).

Regarding claim 11, Dean teaches comparing a booking type to a type of the personal time, and if consistent then the scheduling conflict will not occur (col. 2, lines 6-15).

Regarding claim 12, Dean does not teach wherein the electronic inquiry indicates at least one amount of booking time, and at least one respective booking interval that is greater than or equal to the booking time.

Barto teaches wherein the electronic inquiry indicates at least one amount of booking time, and at least one respective booking interval that is greater than or equal to the booking time (col. 9, lines 6-8, 25-37).

The inventions of Dean and Barto pertain to scheduling. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Barto does not teach away from or contradict Dean, but rather, teaches a function that was not addressed. Additionally, the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the advantage of fewer scheduling conflicts when using dynamic scheduling.

Regarding claim 13, Dean does not teach wherein the user availability message includes a question as to whether the availability should be confirmed by consulting the user.

However, Dean teaches both that the availability can be confirmed automatically, and that the availability can be confirmed by consulting the user, such that some option

for determining whether the availability should be confirmed by consulting the user is implied (col. 6, lines 12-15).

Official notice was previously given not timely traversed and it is therefore admitted that given that question prompts are old and well-known

It would have been obvious to one skilled in the art at the time of the invention to combine the teaching of Dean with official notice, motivated by the teaching in Dean that for some situations, such as when the booking seeking to be scheduled is at a location distant from where the user is before the booking time, it is greatly advantageous for the user to confirm availability (col. 6, lines 12-40). The advantage of avoiding conflicts a computer cannot predict is why it would have been obvious to ask the party seeking a booking whether or not the availability should be confirmed by consulting the user.

Regarding claim 14, Dean does not teach wherein there is a positive determination or indication that the personal time can fit, and the booking is made by booking both the booking time as well as the respective booking interval which is greater than the booking time.

Barto teaches wherein there is a positive determination or indication that the personal time can fit, and the booking is made by booking both the booking time as well as the respective booking interval which is greater than the booking time (col. 9, lines 6-8, 25-41, 45-47).

The inventions of Dean and Barto pertain to scheduling and dealing with conflicts. All the claimed elements were known in the prior art and one skilled in the art

could have combined the elements as claimed by known methods with no change in their respective functions, as Barto does not teach away from or contradict Dean, but rather, teaches a function that was not addressed. Additionally, the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the advantage of fewer scheduling conflicts when using dynamic scheduling.

Regarding claim 15, Dean does not teach wherein a further reservation effectively causes a contraction of the booking interval, if the further reservation has additional requirements about when the booking will occur.

Barto teaches wherein a further reservation effectively causes a contraction of the booking interval, if the further reservation has additional requirements about when the booking will occur (col. 9, lines 25-37).

The inventions of Dean and Barto pertain to scheduling and dealing with conflicts. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Barto does not teach away from or contradict Dean, but rather, teaches a function that was not addressed. Additionally, the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the advantage of fewer scheduling conflicts when using dynamic scheduling.

Regarding claim 16, Dean does not teach displaying the amount of the personal time and the respective interval of time on a shared or individual calendar.

Barto teaches the step of displaying the amount of the personal time and the respective interval of time on a shared or individual calendar (col. 9, lines 58-62, it is inherent that the calendar would display itself).

The inventions of Dean and Barto pertain to scheduling and dealing with conflicts. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Barto does not teach away from or contradict Dean, but rather, teaches a function that was not addressed. Additionally, the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the advantage of fewer scheduling conflicts when using dynamic scheduling.

Regarding claim 17, Dean and Barto teach the method of claim 1 (see above regarding claim 1), and it is inherent that the method carried out by portable electronic organizers (Dean, col. 1, lines 14-16) is stored on a computer-readable medium.

Regarding claim 18, Dean teaches an apparatus comprising:

a personal time recorder, configured to record at least one amount of personal time during which no other bookings by others are allowed (col. 2, lines 16-19, fig. 1, 2, electronic schedule apparatus, fig. 4, col. 6, lines 12-24, user can reject scheduling requests during a previously scheduled time interval);

a receiving component (fig. 1, 2), configured to receive an electronic inquiry about availability for a booking (col. 2, lines 6-11); and

a transmitting component (fig. 1, 2), configured to reject the booking in case of a scheduling conflict between the booking and the personal time, wherein at least one amount of personal time cannot fit within the at least one respective interval in order to accommodate the booking without causing a scheduling conflict (col. 2, lines 11-15).

Dean does not teach:

an interval storage unit, configured to store at least one respective interval of time during which the at least one amount of the personal time is to be reserved, wherein the at least one respective interval of time is a fixed interval of time; and

a user calendar database, configured to integrate data from the personal time recorder and the interval storage unit into an electronic schedule;

wherein each of the at least one amount of the personal time is less than the respective interval of time.

Barto teaches:

an interval storage unit, configured to store at least one respective interval of time during which the at least one amount of personal time is to be reserved, wherein the at least one respective interval of time is a fixed interval of time (col. 9, lines 25-37); and

a user calendar database, configured to integrate data from the personal time recorder and the interval storage unit into an electronic schedule (Abstract, line 1, col. 9, lines 58-62).

wherein each of the at least one amount of the personal time is less than the respective interval of time (col. 9, lines 25-37).

The inventions of Dean and Barto pertain to scheduling and dealing with conflicts. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Barto does not teach away from or contradict Dean, but rather, teaches a function that was not addressed. Additionally, the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the advantage of fewer scheduling conflicts when using dynamic scheduling.

Regarding claim 19, Dean teaches notifying the user if a proposed calendar update causes any conflict with schedule information already integrated into the user calendar database (col. 2, lines 6-15).

Dean does not teach an error check unit configured to notify the user if the amount of the personal time is more than the respective interval, or if the personal time and the respective interval cause any conflict with scheduling information already integrated into the user calendar database.

Barto teaches an error check unit configured to notify the user if the personal time and the respective interval cause any conflict with scheduling information already integrated into the user calendar database (col. 9, lines 45-62).

The inventions of Dean and Barto pertain to scheduling and dealing with conflicts. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Barto does not teach away from or contradict Dean, but

rather, teaches a function that was not addressed. Additionally, the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the advantage of fewer scheduling conflicts when using dynamic scheduling.

Regarding claim 20, Dean teaches wherein the device is a mobile or fixed terminal configured to interact directly with the user (col. 1, lines 8-11, col. 2, lines 21-25).

Regarding claim 21, Dean teaches wherein the device is a server located remotely from a user terminal (col. 2, lines 21-25, col. 6, lines 49-57).

Regarding claim 22, Dean teaches an inquiry processing unit, responsive to an inquiry signal, configured to access the user calendar database in order for the device to provide an availability indicator signal indicative of whether the at least one amount of personal time can fit within the at least one respective interval so as to accommodate a booking without any scheduling conflict (col. 2, lines 11-15).

Regarding claim 23, Dean teaches a system, comprising:
a user scheduling component, responsive to the personal time and interval signal, configured to provide a booking availability signal indicative of whether the at least one amount of personal time can be situated so that a booking fits into an electronic schedule (col. 2, lines 11-15); and

an inquiring terminal, responsive to the booking availability signal, configured to indicate to an operator of the inquiring terminal whether the at least one amount of personal time can be situated within the interval so that the booking fits into the

electronic schedule (col. 4, lines 63-67), and configured to reject the booking in case of a scheduling conflict between the booking and the personal time (col. 6, lines 12-24).

Dean does not teach:

a user terminal, responsive to user input, configured to provide a personal time and interval signal indicative of at least one amount of personal time and a respective interval of time during which the at least one amount of personal time is reserved, wherein the at least one respective interval of time is a fixed interval of time.

Barto teaches:

a user terminal, responsive to user input, configured to provide a personal time and interval signal indicative of at least one amount of personal time and a respective interval of time during which the at least one amount of personal time is reserved, wherein the at least one respective interval of time is a fixed interval of time (col. 9, lines 6-8, 25-37).

The inventions of Dean and Barto pertain to scheduling and dealing with conflicts. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Barto does not teach away from or contradict Dean, but rather, teaches a function that was not addressed. Additionally, the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the advantage of fewer scheduling conflicts when using dynamic scheduling.

Regarding claim 24, Dean teaches wherein the user scheduling component also is for performing at least some scheduling for the operator of the inquiring terminal (col. 2, lines 6-11).

Regarding claims 27-31, they are rejected using the same art and rationale used above for rejecting claims 18-22. This is because claims 27-31 claim an apparatus performing the same functions as the apparatus of claims 18-22.

Regarding claim 32, Dean teaches wherein said personal time is time when no bookings by others are allowed (col. 6, lines 12-24, user can reject scheduling requests during a previously scheduled time interval).

(10) Response to Argument

The Examiner summarizes the various points raised by the Appellant and addresses them individually.

Appellant argues:

- i) Barto is non-analogous art.
- ii) Barto does not teach a reserved window of time that is a fixed interval.

As to argument i), Barto is non-analogous art, the Examiner respectfully disagrees. The instant application and Barto are both solving the same problem which is constraint based scheduling. The intended field of use is not necessarily germane to whether the reference is analogous because the similarities in structure and function of

the invention carry far greater weight *In re Ellis*, 476 F.2d 1370, 1372, 177 USPQ 526, 527 (CCPA 1973). In the instant case and in Barto, the structures of both are conventional computer systems. Further, the shared function is specifying (providing programming steps) for a plurality of scheduling constraints and generating a feasible scheduling solution based on the constraints. In electrical arts, ordinary artisans look for solutions that others have implemented for solving the same problem. An exemplary case is *Medtronic, Inc. v. Cardiac Pacemakers*, 721 F.2d 1563, 220 USPQ 97 (Fed. Cir. 1983); where “[p]atent claims were drawn to a cardiac pacemaker which comprised, among other components, a runaway inhibitor means for preventing a pacemaker malfunction from causing pulses to be applied at too high a frequency rate. Two references disclosed circuits used in high power, high frequency devices which inhibited the runaway of pulses from a pulse source. The court held that one of ordinary skill in the pacemaker designer art faced with a rate-limiting problem would look to the solutions of others faced with rate limiting problems, and therefore the references were in an analogous art.” (see MPEP § 2141.02 V) Therefore, because Barto and the instant invention are solving the same problem and with the same hardware means, it is clear that Barto and the instant invention are in fact analogous art.

As to argument ii), Barto does not teach a reserved window of time that is a fixed interval, the Examiner respectfully disagrees. The Examiner would first like to note that in the Final Office action (mailed 08/02/2010), the claims were rejected under 35 USC § 103(a) as being unpatentable over the combination of Dean and Barto. However, Appellant is arguing patentability of the instant claims over the secondary reference only

rather than in combination in which the claims were rejected, and one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references (*Emphasis Added*). See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Regardless, the Examiner respectfully notes that (as cited in Claim 1 *supra* col. 9, lines 25-37), a "kernel" is a fixed period that must be scheduled *en bloc*. Furthermore, Barto also teaches a "commitment window" (*id.* noting, "a "commitment window" (CW) [] is a time interval during which the provide 325 commits [(inherently fixed)] to meet the engagement."), a fixed window of time in which the fixed interval "kernel" will be scheduled (*id.* also noting, "[a] "kernel" (k) is a time period representing the actual time [(also inherently fixed)] required to complete the task."). Thus, the "kernel" is the fixed constraint that requires a specified fixed period the same as the claimed fixed block of personal time (regardless of the environment in which it is practiced for example, to provide maintenance for a machine, schedule breaks for employees, call back patients, fill out paperwork, attend meetings, etc.). Regardless of the specified environment of the scheduling problem being solved it still serves the same scheduling constraint data function. Therefore Barto clearly teaches the claimed "wherein the at least one respective interval of time is a fixed interval of time."

Further, the Examiner, respectfully notes that previous Examiner stated in the Final Office action that [*sic*] that the "working window [(which may be flexible or fixed)] or commitment window [(which is fixed)] is the respective interval or time" (see Final Office action page 4) and therefore arguments on page 8 of the instant Appeal brief

stating that [sic] "the "working window" is not equivalent to "at least one respective interval of time" is specious. As noted *supra* the fixed commitment window clearly obviates the claimed "at least one respective interval of time". Further because the "working window" may be fixed or may be flexible (depending on the embodiment in which the invention is practiced), the claim is still obviated because at least one disclosed embodiment teaches the claimed feature. Therefore, both the fixed commitment window and specified fixed working window obviate the claimed invention. Accordingly the Examiner has maintained the rejection under §103 wherein the claims are rejected as being obvious in view of the combination of Dean and Barto.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,
Brett Feeney /BF/ October 18, 2010

/LYNDA C JASMIN/
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